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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Myanmar, prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1995/72

CONTENTS

	Paragraphs	Page
INTRODUCTION	1 - 18	3
A. Mandate	1 - 4	3
B. Historical background	5 - 18	4
I. ACTIVITIES OF THE SPECIAL RAPPORTEUR	19 - 84	6
A. Introduction	19	6
B. Visit to Myanmar	20 - 83	6
C. Visits to camps in Thailand	84	17

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CONTENTS (continued)

		Paragraphs	Page
II.	ALLEGATIONS	85 - 164	17
	A. Extrajudicial, summary or arbitrary executions	85 - 92	17
	B. Arbitrary arrest and detention	93 - 113	18
	C. Torture and other cruel, inhuman or degrading treatment	114 - 117	24
	D. Freedom of expression and association	118 - 133	25
	E. Freedom of movement and forced relocation	134 - 140	28
	F. Labour rights	141 - 144	29
	G. The National Convention and the process of democratization	145 - 152	30
	H. The movement toward reconciliation with the insurgents	153 - 160	31
	I. The treatment of the Muslim population in Rakhine State	161 - 164	33
III.	CONCLUSIONS AND RECOMMENDATIONS	165 - 180	33
	A. Conclusions	165 - 179	33
	B. Recommendations	180	36

Annexes

(Documents given to the Special Rapporteur by the Myanmar authorities)

I.	Extract from the Prisons Act, 1894 (Sect. 40, provision 784)	40
II.	Directivè No. 125 prohibiting unpaid labour contributions in national developments projects	41
III.	Directive No. 82 to stop obtaining labour without compensation from the local people in irrigation projects	42

Introduction

A. Mandate

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar has been described in each of the Special Rapporteur's previous reports to the General Assembly (A/47/651, A/48/578, A/49/594 and A/50/568) and to the Commission on Human Rights (E/CN.4/1993/37, E/CN.4/1994/57 and E/CN.4/1995/65). The mandate, initially articulated in Commission resolution 1992/58 and extended most recently by the Commission in its resolution 1995/72 of 8 March 1995 (approved by the Economic and Social Council in its decision 1995/283 of 25 July 1995), required the Special Rapporteur to establish or to continue direct contacts with the Government and the people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar. In resolution 1995/72, the Commission urged the Government of Myanmar to extend its full and unreserved cooperation to the Commission and the Special Rapporteur and, to that end, to ensure that the Special Rapporteur had effectively free access to any person in Myanmar whom he might deem it appropriate to meet in the performance of his mandate, including Daw Aung San Suu Kyi; requested the Secretary-General to give all necessary assistance to the Special Rapporteur; and requested the Special Rapporteur to report to the General Assembly at its fiftieth session and to the Commission at its fifty-second session.

2. The substantive issues addressed by the Commission on Human Rights in resolution 1995/72 included the following concerns: that the electoral process initiated in Myanmar by the general elections of 27 May 1990 had not yet reached its conclusion and that the Government still had not implemented its commitments to take all the necessary steps towards democracy in the light of those elections; that many political leaders, in particular elected representatives, remained deprived of their liberty; that Daw Aung San Suu Kyi, Nobel Peace Prize laureate, was still under house arrest; that there had been a recent offensive against the Karen National Union, Burmese student activists and other groups of the political opposition which resulted in an exodus of refugees into Thailand. The Commission also expressed its grave concern that serious violations of a variety of fundamental rights continued, inter alia the practice of forced labour, including forced portering, and forced displacement of the population.

3. In addition, the Commission took note of the fact that the Government of Myanmar had acceded to the Geneva Conventions of 12 August 1949; withdrawn reservations it had entered concerning the Convention on the Rights of the Child; freed a certain number of political prisoners, in response to the concerns repeatedly expressed by the international community; received the Special Rapporteur for a visit to Myanmar; and observed cease-fire agreements with ethnic groups.

4. The Special Rapporteur submitted a preliminary report to the General Assembly at its fiftieth session in October 1995 (A/50/568). The present comprehensive report is submitted to the Commission on Human Rights at its fifty-second session for its consideration.

B. Historical background

5. In 1948, the Union of Myanmar (then called Burma) gained independence from British colonial rule. From 1948 until 1962, the country was governed by a parliamentary democracy based on the Constitution of 2 September 1947. It provided for a federal system of government with separate executive, legislative and judicial branches. The States under the Union were considered autonomous. According to article 201 of the Constitution of 1947, ethnic minorities had, in theory, the right to secede from the Union, but, under article 202, this right was not to be exercised until 10 years from the date of entry into force of the Constitution. In March 1948, an armed insurgency against the then Government of Burma was begun by the Communist Party of Burma. Between 1948 and 1961, various minority ethnic groups joined the armed insurgency.

6. In March 1962, General Ne Win took power in a coup d'état. He installed one-party (the Burma Socialist Programme Party) rule under military control. He embarked upon a programme known as the "Burmese Way to Socialism". In 1974, a new Constitution was drafted under which one-party rule continued.

7. Towards 1988, nationwide demonstrations began in reaction to the suppression of all civil and political rights since the overthrow of the constitutional government in 1962 and to the economic failure as a consequence of the policy of the Burmese Way to Socialism.

8. From March to June 1988, students, workers and monks demonstrated for more freedom and democracy, but the army used harsh measures to crush the demonstrations. Hundreds of civilians were arrested and many suffered severe injuries or died from ill-treatment in detention. Many persons were summarily or arbitrarily executed. On 21 June 1988, the Government imposed a ban on all public gatherings.

9. On 23 July 1988, General Ne Win resigned as party leader and promised economic reform and the holding of a referendum to end one-party rule and institute a multi-party system. However, demonstrations continued and the Army and riot police attacked the demonstrators. It was reported that approximately 3,000 persons were killed in August 1988 alone. On 18 September 1988, the military took power and the State Law and Order Restoration Council (SLORC) was set up under the chairmanship of the Chief of Staff, Senior General Saw Maung. The National Assembly (Pyithu Hluttaw), the Council of State and other governmental bodies were dissolved. Free elections were promised by SLORC but Daw Aung San Suu Kyi, daughter of General Aung San (the national hero of independence who was assassinated in 1947) and General Secretary of the National League for Democracy (NLD), was banned from campaigning on the grounds that she kept unlawful association with insurgent organizations. On 20 July 1989, Daw Aung San Suu Kyi was detained by government forces. She was kept under house arrest without trial and,

in 1991, she was awarded the Nobel Prize for Peace. Many others, including most of the important opposition political leaders, were also detained.

10. On 27 May 1990, general elections were held in which the main opposition party (NLD) won 81 per cent of the seats (392 seats out of 485 in total) and 60 per cent of the votes. However, the official announcement of the results of the elections was postponed by SLORC in order to allow the Election Commission set up by SLORC to scrutinize the expense accounts of all elected representatives.

11. Beginning in early 1992, a mass exodus of Myanmar Muslims from Rakhine State into Bangladesh was reported. At least 250,000 such persons sought refuge for fear of persecution. On 28 April 1992, the Governments of Myanmar and Bangladesh signed an agreement for the voluntary and safe return of the refugees. By October 1993, approximately 40,000 refugees had returned to Myanmar under this arrangement.

12. On 5 November 1993, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Government of Myanmar signed a memorandum of understanding in an effort to ensure the voluntary and safe repatriation of the persons who had left the country for Bangladesh. This memorandum of understanding was similar to the one between UNHCR and the Government of Bangladesh signed on 12 May 1993. Both Governments expressed satisfaction at this accord and the participation of UNHCR, since it was the responsibility of the country of refuge to assure the voluntariness of repatriation, while it was the responsibility of Myanmar to assure safety upon return. From September 1992 to the end of October 1995, a total of more than 190,000 refugees out of approximately 250,000 have returned to Myanmar.

13. In April 1992, General Than Shwe became Chairman of SLORC after General Saw Maung had resigned from the post for reasons of health. Since this change of leadership, a number of new policies had been announced and implemented, including: the release of many political leaders in detention (including the former Prime Minister U Nu, but not Daw Aung San Suu Kyi); the holding of a national convention for drafting the principles and guidelines for a new constitution; the granting of permission to the family of Daw Aung San Suu Kyi to visit her; the opening of universities and other institutions of higher education; the lifting of the curfew order and martial law; and the cessation of military tribunals for civilian cases.

14. On 9 January 1993, the National Convention was convened. The participants were composed of 702 delegates from eight categories, as follows: (a) representatives of political parties, including NLD (49); (b) representatives elected in the 1990 elections (107); (c) representatives of national racial groups (215); (d) representatives of peasants (93); (e) representatives of workers (48); (f) representatives of the intelligentsia and technocrats (41); (g) representatives of State service personnel (92); and (h) other invited persons (57). The meeting of the National Convention has been adjourned several times for reasons not quite clear to outside observers.

15. On 15 March 1995, the Government of Myanmar released two prominent NLD leaders, namely U Kyi Maung and U Tin Oo.

16. When the National Convention adjourned on 8 April 1995, the Chairman of the National Convention and Chief Justice U Aung Toe stated that agreement had been reached on laying down principles for the designation of self-administered divisions and self-administered zones under the chapter of the constitution entitled "State structure".

17. On 10 July 1995, after six years of house arrest, the Government of Myanmar announced that restrictions on Daw Aung San Suu Kyi had been lifted and that she had been released without conditions.

18. On 28 November 1995, the Government of Myanmar reconvened the National Convention. The subjects on its current agenda are: the legislature; the executive and the judiciary branch. Like the previous sessions, the plenary opening session was attended by, among others, five NDL delegates included in the political parties delegates group, and 81 elected NLD representatives included in the elected representatives group. Following the opening address delivered by Lt.Gen. Myo Nyunt, Chairman of the National Convention Convening Commission, the representatives and delegates of NLD decided to withdraw from the Convention and to boycott its current session. The NLD leaders said that its delegates would only attend the Convention again if the military authorities began a dialogue with party leaders. After the withdrawal of the members of NLD, which, despite winning 80 per cent of the seats in the 1990 general elections had been allocated only 15 per cent of the 702 delegates, the Chairman of the Convention invited the remaining delegates to continue their work in accordance with the original arrangements.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Introduction

19. As regards his efforts to fulfil the mandate entrusted to him by Commission resolution 1995/72, the Special Rapporteur would have to report that the restrictive measures taken by the United Nations Secretariat in New York, as a result of the financial crisis, have created great difficulties to him and seriously impeded his activities. In particular, the Special Rapporteur would like to record his disappointment as to the fact that his travel to Myanmar was authorized with only 24 hours' notice and that no interpreter was assigned to him to enable him to carry out this very important mission efficiently and effectively. This is contrary to paragraph 24 of the Commission's resolution, which specifically "requests the Secretary-General to give all necessary assistance to the Special Rapporteur".

B. Visit to Myanmar

20. On 4 September 1995, the Special Rapporteur addressed a letter to the Government of Myanmar requesting permission to visit the country from 8 to 17 October 1995. On 28 September 1995, in a letter from the Permanent Representative of Myanmar to the United Nations Office at Geneva, the Special Rapporteur was informed that the proposed dates for his visit had been tentatively agreed to. On 29 September 1995, the Special Rapporteur addressed another letter to the Government of Myanmar, in which he requested audiences with high governmental officials and meetings in circumstances providing full confidentiality with leaders of political parties, including those in

detention or under restriction. The Special Rapporteur also requested full and free access to all individuals, representatives of non-governmental and intergovernmental organizations, whom he might deem it necessary to meet in carrying out his mandate or who might have expressed the wish to meet him. He further requested permission to visit prisons and other centres of detention, with confidential and unrestricted access to those detained. In addition, the Special Rapporteur requested that he be granted full access to other areas of the country, in particular Shan and Kachin States, for the purpose of visiting some development or construction sites, specifically the Mong Kwan electric power plant where many forced labourers are reported to be working and Myitkyiana-Sumprabom Road or Myitkyana-Shibwe Lawkhaungng Road.

21. The Special Rapporteur visited Myanmar from 8 to 17 October 1995. Prior to the visit, he had been in frequent contact with the Permanent Representative of Myanmar to the United Nations Office at Geneva and with the Minister for Foreign Affairs, who cooperated fully and facilitated the visit. During his visit to Myanmar all of the Special Rapporteur's specific requests for meetings with high-level government officials were met. Similarly, visits to Shan and Kachin States were facilitated with appropriate briefings, meetings and visits. During this visit, the Special Rapporteur enjoyed freedom of movement and freedom of access to private persons and others of interest, with some notable exceptions which will be addressed below. The Special Rapporteur would like to record his deep appreciation to the Government of Myanmar for its cooperation in facilitating his visit to the country and in responding to his requests for information and explanation.

22. In Yangon, the Special Rapporteur met with the following governmental representatives: Lieutenant-General Khin Nyunt, Secretary One of SLORC; U Nyunt Swe, Deputy Minister for Foreign Affairs; Lieutenant-General Mya Thinn, Minister for Home Affairs; Brigadier-General D.O. Abel, Minister for National Planning and Economic Development; Major-General Aye Kyaw, Minister for Information; U Tha Tun, the Attorney-General; and U Aung Toe, Chief Justice of the Supreme Court.

23. In the course of his visit to Myanmar, the Special Rapporteur paid visits to the following governmental institutions and facilities: Insein and Myitkyina prisons.

24. The Special Rapporteur met with representatives of the following political parties which are participating in the National Convention drafting the new constitution of the Union of Myanmar: the National League for Democracy (NLD); the Union Kayene League; and the National Unity Party (NUP).

25. While the information and views obtained in the course of his visits and meetings will be reflected below under relevant subject headings, the Special Rapporteur draws attention here to the salient aspects of the visits and meetings mentioned above.

1. Meeting with Secretary One

26. On the morning of 16 October 1995, Secretary One of SLORC, Lt.Gen. Khin Nyunt, received the Special Rapporteur at the Ministry of Defence. They discussed political, economic and social changes and enjoyed a

frank, open and lengthy exchange of views which touched upon issues of concern for the respect of human rights and the restoration of democracy in Myanmar.

27. Lt.Gen. Khin Nyunt described a variety of political, social and economic development initiatives which had been taken by the Government since it took power in 1988 in order to achieve political stability, economic progress and improvement of social conditions.

28. On the matter of the general political organization of the State, Lt.Gen. Khin Nyunt explained that the stability of the State was the most basic requirement for the development of the Union of Myanmar. National reconsolidation, therefore, was an indispensable component of the Government's policy to achieve peace and political stability. Success was being achieved in that task with the unprecedented return to "the legal fold" of 15 out of 16 ethnic armed groups.

29. In the economic sector, Lt.Gen. Khin Nyunt described to the Special Rapporteur a variety of initiatives which had been taken by the Government in order to improve the life of the people, to develop all the regions and to reduce the gaps between the rich and the poor and between urban and rural areas. In this regard, Lt.Gen. Khin Nyunt cited the implementation of a variety of projects launched by the Government, i.e. the construction of roads, bridges, railroads, hydropower stations and reservoirs. Special efforts were being made for the development of the border areas where more than US$ 400,000 had already been spent by SLORC on projects aimed at enhancing the infrastructure of those regions and improving the standard of living of the population concerned. The Government was taking several measures to increase agricultural production, investing in projects for greening arid districts and extending irrigation networks including those storing rainwater and pumped water for use when needed. Altogether 52 dams had been built in the time of SLORC and several other projects were being carried out.

30. In connection with these development projects, Lt.Gen. Khin Nyunt said that the slanderous stories about forced labour were not true and were only invented by unscrupulous persons who did not want to see Myanmar develop under the present Government, or by insurgent groups. He stated that the people of Myanmar were of the Buddhist faith and were willing to contribute voluntarily to the development projects, believing that they would be the first ones to enjoy the results on Earth and thereafter.

31. With regard to the social sector, progress was being sought to strengthen political stability and economic progress, which was paving the way for the emergence of a peaceful, prosperous and modern State. The Government was endeavouring to preserve the national character and cultural heritage and raise the standard of education and health of the entire population.

32. On the general subject of human rights, Lt.Gen. Khin Nyunt explained that the character of the Myanmar people, their notions and way of life had been formed and shaped by Buddhist teachings which were in harmony with the international human rights standards and prohibited killings, torture and violence in general.

33. Concerning the Special Rapporteur's specific questions about the lack of freedom of expression and restrictions with regard to the distribution of pamphlets by political parties, Lt.Gen. Khin Nyunt stated that for the moment such activities would affect negatively the stability and peace which were prevailing in the country. He added that it was not the appropriate moment for the country to open up to democracy. The main priority was to avoid "chaos". Accordingly, the Government was trying first to educate people to behave in conformity with democratic principles. He added that a democratic system could only be established in an atmosphere of peace, tranquillity and prosperity, rather than under anarchy, disintegration of the nation and disorder.

34. Regarding the arrest of several students during the funeral of former Prime Minister U Nu and of three political leaders in mid-June 1995, Secretary One said that politicians were quite free to go about their business and to travel freely in the country with the permission of the Government. However, they could not be allowed to disturb the peace and tranquillity or bring about disorder. Otherwise, conditions in the country would deteriorate and, consequently, the majority of the population would suffer. As a responsible Government, SLORC had to take into consideration economic and political, including security, concerns. It was in that connection that he justified the arrests of the three opposition activists and the students. Responding to the Special Rapporteur's specific request to meet with them in Insein Prison, Secretary One replied that it was difficult to respond positively because the detainees would provide him with false and negative opinion of the country since legal action had been taken against them.

35. Secretary One assured the Special Rapporteur that SLORC had direct contact with Daw Aung San Suu Kyi, but the Government had so many important tasks to achieve in terms of economic and social development that for the moment it was not a priority to resume its dialogue with her.

36. With regard to possible visits by the International Committee of the Red Cross (ICRC) to places of detention in Myanmar, Secretary One imputed the failing of the negotiations to the "harsh and rude" attitude of the ICRC chief of delegation. He added that the Government had already intimated to ICRC that it should continue the ongoing dialogue in that regard as they were collaborating in many other instances.

37. With regard to the postponement of the National Convention, Secretary One told the Special Rapporteur that there was no political reason behind that decision. He explained that many of the delegates of the respective delegate groups were inclined to attend to their business, especially agricultural matters, as well as charities at a time when the rainy season was ending. Therefore, they had expressed their wish that the National Convention should be reconvened later. Taking into consideration the wishes of many of the National Convention delegates, the National Convention Convening Commission had designated 28 November 1995 as the date for reconvening the National Convention, to enable all the delegates to attend.

38. Lt.Gen. Khin Nyunt ended the meeting by stating that the Government was attempting to develop the country politically, economically and socially and that, although there were problems, they would be overcome. It could not

allow the country to be destroyed or to disintegrate and it would not accept any pressure, either from the inside or from other countries. It would carry on action, in accordance with the law, against any activity aimed at disunity and destruction of the country.

2. Meetings with the Attorney-General and the Chief Justice

39. On the morning of 10 October 1995, the Special Rapporteur met with Attorney-General U Tha Tun after having earlier met with Chief Justice U Aung Toe.

40. His discussion with the Chief Justice focused on the National Convention (which the Chief Justice is chairing). The Minister recounted the process from its very start, explaining how the Preparatory Committee for the National Convention had been constituted, specifying the composition of delegates to the National Convention and highlighting the achievements of each meeting of the National Convention, since it began on 7 January 1993 up to the recent developments. With regard to the time-frame for the drafting of the Constitution, the Minister stressed that priority must be given to national reconciliation and achieving peaceful relations between all the national races in order to obtain a consensus in the country and secure union. When asked by the Special Rapporteur why no copy of the Universal Declaration of Human Rights, in the Burmese language, had been provided to every National Convention delegate as he had recommended, the Minister said that it was impossible to distribute it among 700 delegates, but an English copy was available at the Convention library. With regard to the postponement of the National Convention, the Minister of Justice told the Special Rapporteur that there was no political reason behind that decision. He explained that many of the delegates, because of the harvest season and owing to religious activities, had expressed the desire to reconvene the National Convention at a later date. Taking into consideration the wishes of the delegates, the National Convention Convening Commission had designated 28 November 1995 as the date for reconvening the National Convention, to enable all the delegates to attend.

41. The discussion with Attorney-General U Tha Tun revolved around new legislation, such as reform of existing Myanmar legislation, for which the Attorney-General has responsibility both in his governmental office and as Chairman of the Law Revision Commission. In response to the Special Rapporteur's inquiries about the Government's intention to consider accession to the International Covenants on Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Attorney-General explained that the role of his office was mainly technical and advisory and that it therefore had no authority for such political decisions.

42. In response to the Special Rapporteur's inquiries about the collaboration between the Government of Myanmar and ICRC, the Attorney-General informed the Special Rapporteur that his office had scrutinized the draft memorandum of understanding and made some amendments in order to bring them into conformity with the national laws. The ICRC standard requirements for visits to places of detention and to have private meetings with the prisoners had been rejected because they were contrary to Myanmar law, specifically provision 784,

section 40 of the Prisons Act, which stipulated that "every interview with a convicted prisoner shall take place in the presence of a jail officer ... who shall be so placed to be able to see and to hear what passes". (See annex I).

3. Meeting with the Minister of Information

43. On the morning of 11 October 1995, the Special Rapporteur met with Major-General Aye Kyaw, Minister of Information, together with members of the Information Committee over which the Minister presides. The Minister provided information on the availability of national and international publications in Myanmar. Nevertheless, responding to a question regarding freedom of expression and whether any independent publication existed in Myanmar, the Special Rapporteur was informed that within Myanmar the written press, radio and television were subjected to governmental control and scrutiny. The Minister added that the conditions to permit a liberalization of the media were not met for the moment and no decision had been taken in that regard.

44. Responding to the suggestion made by the Special Rapporteur to disseminate publications referring to international human rights standards, Maj.Gen. Aye Kyaw explained that most of the human rights provisions were contained in Buddhist publications. Therefore, there was no need to have a specific publication referring to the human rights standards.

4. Meeting with the Minister for National Planning and Economic Development

45. On the morning of 11 October 1995, the Special Rapporteur met with Brigadier General D.O. Abel, Minister of National Planning and Economic Development. He explained about the Myanmar economy, economic projects and accomplishments, investment laws, procedures and potential, and rules and regulations amended in conformity with the market oriented economy. Confident of continued economic growth, Brigadier General Abel said that special efforts were being made to promote development of the agriculture sector to provide enough food for the nation and to increase exports. Farmers were being encouraged to cultivate double crop paddy to multiply their income and contribute towards raising their living standards.

46. With respect to the allegations of human rights violations regarding forced labour, the Minister of National Planning and Economic Development denied the existence of such a practice and said that the allegations were completely false and that such a practice would be a nonsense in economic terms. He explained that local inhabitants were voluntarily contributing during their spare time to community projects which would bring direct benefit, such as building a road, bridge, school, dispensary or monastery.

5. Meeting with the Minister for Home Affairs

47. On the morning of 16 October 1995, the Special Rapporteur met with Lt.Gen. Mya Thinn, Minister for Home Affairs.

48. Responding to the Special Rapporteur's specific request to receive information on whether any civil servant or police officer had been tried or sentenced, dismissed from duty or sanctioned for their part in any verified

violation of human rights, Lt.Gen. Mya Thinn told the Special Rapporteur that he was not in possession of any information of such a nature and explained the rules and regulations to be followed by the Special Investigation Department in the event of any violations. Each case of violation would be transferred to the relevant Ministry and would be tried by an appropriate court. In the case of serious offences, such as murder or rape, the case might be transferred to an ordinary court to assure impartiality.

49. On the particular question of forced labour, the Special Rapporteur told Lt.Gen. Mya Thinn that, while in Myanmar, he had been informed about the existence of a "secret directive" aimed at discouraging the practice of forced labour without payment, and he requested an official copy of the document. The Minister did not deny the existence of such a directive and promised to give him a copy before his departure from the country, although such a matter was considered "classified". The Special Rapporteur would like to note that, before leaving the country, he was indeed provided with a copy of both directives. They are reproduced in annex II to the present report.

50. Regarding the status of Muslim refugees who had returned from Bangladesh to Myanmar, the Minister for Home Affairs informed the Special Rapporteur that the Government had agreed to grant returnees over 18 years of age an identity document called "temporary identification card". He added that those identity documents would not change the status of the persons concerned. Lt.Gen. Mya Thinn recalled that the Muslim population of Rakhine State were not recognized as citizens of Myanmar under the existing naturalization regulations and they were not even registered as so-called foreign residents. Consequently, the Minister added, their status situation did not permit them to travel within the country.

6. Meeting with Daw Aung San Suu Kyi and NLD leaders

51. During his stay in Yangon, the Special Rapporteur met twice with Daw Aung San Suu Kyi, on 10 and 16 October 1995. U Aung Shwe, U Tin Oo, U Kyi Maung and other representatives of NLD were also present during both meetings. They discussed the political, economic and social situation in Myanmar and enjoyed an open and lengthy exchange of views which touched upon issues of concern for the respect of human rights and the restoration of democracy in Myanmar.

52. During these meetings, the Special Rapporteur was informed about the new composition of the Executive Committee of the National League for Democracy which was now constituted as follows: U Aung Shwe as Chairman; U Kyi Maung and U Tin Oo as Deputy Chairmen, Daw Aung San Suu Kyi as General-Secretary and U Lwin as Secretary.

53. The NLD representatives explained how the civil and political rights of NLD leaders/members were severely restricted. Because of both visible and invisible pressures, they could not assemble in a group, could not have free discussion and could not publish or distribute printed materials.

54. The NLD delegates reported their concern about the problem of the relocation of parts of the population from their homelands to newly constructed townships in order to provide space for the building of new towns or construction projects such as hotels.

55. With regard to the National Convention, the NLD representatives expressed their concern about the current process of drafting the Constitution, which did not permit an open and free exchange of views and opinions and, therefore, could not produce a truly democratic Constitution.

56. The NLD representatives informed the Special Rapporteur about the economic development which was taking place in Myanmar. They said that the economic growth was not benefiting everyone. They expressed their concern about inflation in Myanmar, which had averaged around 30 per cent per annum in recent years. Prices for basic consumer goods such as rice had risen and the majority of local people could not keep up with them. They concluded the discussion on the economy by saying that the rich, who were only a tiny portion of the population, were becoming richer, while the poor who represented the majority, were suffering more.

57. The NLD representatives told the Special Rapporteur that they were not satisfied with the delay, due to SLORC, in initiating the beginning of a dialogue. They added that only a genuine and constructive dialogue would lead to peace, in order to pave the way for democracy and a sustainable economic development.

7. Meetings with leaders of political parties

58. On the morning of 10 October 1995, the Special Rapporteur met with representatives of three political parties participating in the National Convention, the National League for Democracy (NLD), the National Unity Party (NUP) and the Union Kayene League. As last year, and in spite of the strong request by the Special Rapporteur to meet with them in private at his office in the United Nations compound in Yangon, the meetings were arranged to take place at a Government Guest House (36 Inya Road). The location and atmosphere of the meetings were obviously not conducive to a free and unencumbered exchange of views.

59. The Special Rapporteur first met with the Chairman of NLD, U Aung Shwe. The NLD delegate stated that the situation of freedom of movement, expression and organization had improved little from previous years, and serious infringements of those basic human rights were still prevalent in the country. He informed the Special Rapporteur that, as of 1995, the delegates to the National Convention were not permitted to publish or distribute any documents or newsletters. When the NLD members wished to organize meetings through the country to meet the local population, they had to seek permission from the Government. The Chairman of NLD further reported that he was still not allowed to travel outside Yangon without permission from the Local Council.

60. The Special Rapporteur met with two representatives of the National Unity Party (NUP): U Sein Win, Central Executive Committee member, and a member of the Secretariat. The National Unity Party was formed out of the former Burma Socialist Programme Party. Although there was no deadline to achieve the drafting of the Constitution, they felt that the work at the National Convention was progressing and the major substantive principles to be included in the Constitution had already been formulated. The NUP preferred a

parliamentary system rather than a presidential system. However, they respected the majority decision of the delegates to agree upon a presidential system.

61. The NUP delegates informed the Special Rapporteur that their party was permitted to produce a bi-weekly pamphlet informing readers about their activities, and also pamphlets on political education. It could circulate those publications among its members, but not in the National Convention. It could also organize meetings within the country, except in some areas for security reasons.

62. With regard to the NUP position pertaining to the recent release from house arrest of Daw Aung San Suu Kyi, U Sein Win informed the Special Rapporteur that she was considered just as a citizen of the country.

63. The Special Rapporteur met with two representatives of the Union Kayene League: President U Mah and a joint secretary. The representatives stated that the group, which was composed of two subgroups, the Pwo Kayin and Sgaw Kayin, was the only Karen group recognized by SLORC. The League's membership was said to be approximately 50,000. It had five delegates attending the meetings held in the context of the National Convention. The representatives of the League welcomed the release of Daw Aung San Suu Kyi as a positive step.

64. They informed the Special Rapporteur that most Karen in Myanmar were poor peasants living in villages. The great majority were Buddhists (80 per cent) and some were Christians (15 per cent). As a group they had no information about the fights which had occurred in Karen State at the beginning of 1995 and no connection with the insurgents living at the frontier between Karen State and Thailand.

8. Visit to Myitkyina Jail

65. On the afternoon of 13 October 1995, the Special Rapporteur visited Myitkyina Jail. He was not allowed to see any of the detainees, nor was he allowed to see the cells. At the time of the prison visit, the prison authorities stated that they were unable to comply with the Special Rapporteur's request to see the detainees and the cells because they required permission from the higher authorities.

66. The Prison Director, U Sein Wein, informed the Special Rapporteur that there were 369 prison inmates, of whom 307 were males and 62 were females. The prison had a capacity of 300.

67. The length of the sentences of the inmates varied from one day to 10 years. Four prisoners (of whom one was a woman) were serving the maximum 10 years' sentence. The majority of the prisoners had been convicted under common law charges and for drug offences.

68. The Prison Warden told the Special Rapporteur that inmates were kept in cells having an opening high on one wall. Bamboo mats and potable water were available in the cells. Each inmate was provided with food three times a day

and had access to information through newspapers and magazines. Contributions to labour, such as cleaning the prison facilities, were undertaken on a voluntary basis.

69. The inmates had the right to receive visits from their families twice a month. In addition, special permissions were granted to their lawyers to visit them.

70. The Prison Director informed the Special Rapporteur that 33 staff members were working in the prison. Inmates were provided with medical assistance in the prison dispensary and twice a week a medical doctor visited the prisoners. One day per week, an officer visited all the cells and recorded the complaints of the inmates, if any.

9. Visit to Insein Prison

71. On the morning of 12 October 1995, the Special Rapporteur visited Insein Prison. The Director-General of Insein Prison, U Kyaw Than, welcomed the Special Rapporteur and told him that he was not allowed to see any of the detainees.

72. The Special Rapporteur had made a request in writing on the first day of his stay in Myanmar as to the detainees he wished to see and had asked for free access to those and other detainees in Insein Prison. Despite repeated requests made orally during his meetings with government officials, the prison authorities stated that they were unable to comply with the Special Rapporteur's request to see the detainees and the cells because they required authorization from the higher authorities.

73. The Prison Warden informed the Special Rapporteur that he was only authorized to show him such facilities as the hospital building, the kitchen and the garden. The Special Rapporteur declined the invitation and requested, once again, at the time of the prison visit, the Director-General to contact the Minister for Home Affairs to obtain authorization to meet with the detainees. While waiting for a reply, the Special Rapporteur remained in the reception room and sought some clarifications regarding the organization of the prison.

74. Among the prisoners that the Special Rapporteur requested to see were those detained under section 5 (j) of the 1950 Emergency Provisions Act for having collected and distributed anti-government seditious pamphlets or for having created disturbances. Some of them belonged to political parties (U Tun Shwe, U Thu Wai and U Htwe Myint) and several others were students arrested during U Nu's funeral. In addition, the Special Rapporteur requested to see Myin Ko Naing with whom he had met during his last visit, and Ma Thida. According to the prison authorities, all of the detainees the Special Rapporteur requested to see were in Insein Prison and in good health. When asked if these detainees were kept in solitary confinement, the Prison Warden told the Special Rapporteur that he could not remember their present situation in the prison.

75. The Director-General informed the Special Rapporteur that Insein Prison had a capacity of 5,000. At the moment of his visit, he was told that there

were 3,107 prison inmates, of whom 391 were females. Thirty-nine prisoners were facing the death penalty, but their sentence would not be carried out because all death sentences had been commuted to life imprisonment by a governmental order of November 1992.

76. The Prison Warden told the Special Rapporteur that each inmate was provided with food three times a day and had access to potable water. Family members had the right to visit the inmates twice a month and were permitted to bring additional food to their relatives.

77. A prison medical doctor informed the Special Rapporteur that a team of one doctor and four nursing staff were taking care of the health of the prisoners. When an emergency case or serious illness arose, arrangements were made for the patients to receive the necessary treatment at general or specialized hospitals. With respect to the specific problem of AIDS, the prison medical doctor informed the Special Rapporteur that he was aware of a few cases of inmates who were HIV positive. Those inmates were kept among the other detainees without any specific precautions. He added that owing to the lack of appropriate equipment for HIV diagnosis, no systematic screenings were conducted among the prisoners. In response to an inquiry from the Special Rapporteur, the Director-General stated that there was no drug problem in Insein Prison.

10. Visits to Myitkyina in Kachin State and Kyainge Tong in Shan State

78. Prior to his departure for Myanmar, in a letter addressed to the Government on Myanmar, the Special Rapporteur requested to visit the Mong Kwan electric power plant in Shan State and Myitkyina-Sumprabom Road or Myitkyina-Shibwe Lawkhaungng Road in Kachin State.

79. Once in Myanmar, the Special Rapporteur was told that, owing to weather conditions and difficulties of access, he could not visit the construction site of the Myitkyina-Sumprabom Road or Myitkyina-Shibwe Lawkhaungng Road. Instead, on 14 October 1995, he was taken to the construction site of the "Ayeyarwady Bridge". The bridge will link Sitapu and Mine Nar in order to connect the city of Myitkyina with the other side of the river. According to the managing director of the project, 250 workers were involved in the project. All of them were labourers from lower Myanmar and were paid 3,000 kyats per month. They were provided by the Government with free accommodation and rice.

80. Given the absence of a United Nations interpreter, the Special Rapporteur could not interview the group of workers who were at that time digging a hole and taking out the earth manually with basic instruments.

81. On 15 October 1995, the Special Rapporteur travelled to Kyainge Tong in Shan State. Instead of the Mong Kwan electric power plant, the Special Rapporteur was taken to visit the Nam Wop hydroelectric project, a small hydroelectric station located 10 miles south of Kyainge Tong. The project started in January 1992 and was completed in July 1994. According to the managing director of the project, inhabitants of surrounding villages were involved in the construction of the site. They were paid 20 kyats per day and

were provided with food. In response to an inquiry from the Special Rapporteur, the managing director stated that none of the workers was forced to work on the project. He added that some farmers preferred to leave because that was economically more attractive to them.

82. On 16 October 1995, the Special Rapporteur had the opportunity to visit, in Kyainge Tong, a nursery school, a boarding school for the orphans of victims of insurrection along the border and a technical school for young women. All these institutions were initiated by the Ministry for the Progress of the Border Areas and National Races and Development Affairs in order to carry out a comprehensive integrated socio-economic development programme in the border areas.

83. The Special Rapporteur wishes to note that while in Myitkyina and Kyainge Tong, he generally observed that there were visible signs of relaxation of tension in the life of the people. There were many consumer goods in market places where many shoppers crowded.

C. Visits to camps in Thailand

84. Following his visit to Myanmar, the Special Rapporteur travelled to the Thai side of the frontier in order to meet with persons from Myanmar living in camps which skirt the Myanmar-Thai border. The visit to Thailand was conducted between 17 and 20 October 1995. The two camps visited were in driving distance from Mae Hong Son and Mae Sariang respectively. It is believed that approximately 80,000 persons who have fled Myanmar are living in similar camps in the border area. During the above-mentioned visit, the Special Rapporteur met with a total of 35 newly arrived persons from Myanmar, mostly Karen, Karenni and Shan. All interviewees were able to provide recent information on the situation in Myanmar, especially in the border area. Most interviewees were in poor physical and psychological condition. The information and views obtained in the course of his visits will be reflected below under relevant subject headings.

II. ALLEGATIONS

A. Extrajudicial, summary or arbitrary executions

85. As noted in his interim report to the General Assembly at its fiftieth session (A/50/651), the Special Rapporteur did not this year receive information of an explicit or systematic government policy encouraging summary killings.

86. However, there continued to be credible reports of instances of brutality, sometimes resulting in the killing of civilians, by Myanmar military forces under a variety of circumstances. This is often the case in the border areas where ethnic insurgencies have been taking place. Many of those allegedly killed were civilians who were accused either of being insurgents or of collaborating with insurgents.

87. Other reports from non-governmental sources have described cases of civilians who were allegedly executed when they resisted becoming porters for the Army or were beaten to death while being used as porters. The Army is

also reported to have executed civilians for failure to provide goods or services demanded. These would include labour, food, money or arms.

88. In addition to the reports received by the Special Rapporteur alleging summary or arbitrary executions, he himself interviewed persons, during his visit to the refugee camps in Thailand, who claimed that either members of their families had been killed or severely injured as a consequence of attacks by the Myanmar Army, or that they had themselves been victims of such human rights violations.

89. Some cases of reported summary or arbitrary executions were described in paragraphs 3 to 5 of the interim report of the Special Rapporteur to the General Assembly at its fiftieth session (A/50/568 of 16 October 1995). These cases included allegations of: severe torture causing the death of the victims; the killing of civilians for having disobeyed orders from the Army (Tatmadaw) to relocate their homes, to supply goods or provide labour for little or no compensation; arbitrary "revenge" killings of persons from villages near to the locations of attacks carried out by insurgent forces against the Tatmadaw. Collective and arbitrary punishments are often said to include summary executions of civilians present in the area.

90. In response to the request of the Special Rapporteur to be provided with information describing any investigations undertaken by the Government into these allegations, the Government of Myanmar replied as follows:

> "No instances of extrajudicial, summary or arbitrary execution can be permitted in the Union of Myanmar and no provision is made in the law for such."

91. Although the Special Rapporteur is aware that sometimes reports of arbitrary killings tend to be exaggerated or distorted, that there are cases of good treatment of villagers and captured insurgents by the Tatmadaw soldiers, that instances of such violations appear to be decreasing and that the insurgents also commit serious violations of human rights, he cannot deny, in view of so many detailed and prima facie reliable reports, that violations appear to be committed consistently by the soldiers of the Myanmar Army against innocent villagers (particularly those belonging to ethnic minorities) in the form of summary or extrajudicial executions and arbitrary killings, which often occur in the course of forced labour, rape, forced relocation and confiscation of property.

92. In relation to some specific cases, the Special Rapporteur draws attention to the report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (E/CN.4/1996/4). In this connection, the Special Rapporteur is aware that the Government of Myanmar has recently responded in detail to most of the allegations transmitted by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.

B. Arbitrary arrest and detention

93. As stated in his interim report to the General Assembly at its fiftieth session (A/50/551), the Special Rapporteur noted with satisfaction the release in 1995 of some detainees, among whom were pre-eminent NLD leaders.

Dr. Aung Khin Sint and Tin Moe were among a group of 23 prisoners freed on 24 February 1995 from Insein Prison. The Special Rapporteur welcomed the release, on 15 March 1995, from various centres of detention of Myanmar of 31 detainees, including U Kyi Maung and U Tin Oo. U Tin Oo, a retired general and one of the founders of the NLD was arrested on 20 July 1989; the Special Rapporteur met him twice in Insein Prison in 1993 and 1994. U Kyi Maung, a retired colonel, was the Chairman of the NLD during the 1990 elections. He was arrested in September 1990 for allegedly passing on material to foreigners. The Special Rapporteur also welcomed with great satisfaction the announcement, made on 10 July 1995, that restrictions on Daw Aung San Suu Kyi were being lifted by the Government of Myanmar and that she had been released without conditions.

94. However, despite the reported release of over 2,000 political detainees since April 1992, hundreds of other political prisoners are still serving long jail terms and other citizens continue to be arrested for the peaceful expression of their opinions and ideas.

95. In February 1995, nine young activists, namely, Aung Zeya, Tin Than Oo, Nyunt Myaing, Moe Maung Maung, Maung Maung Oo, Moe Myat Thu, Moe Kalayar Oo, Cho Nwe Oo and Aye Aye Moe, were arrested for having reportedly chanted slogans during U Nu's funeral. By letter dated 5 September 1995, the Special Rapporteur requested the Government of Myanmar to provide information regarding their present situation. In its note verbale dated 4 October 1995, the Government provided the Special Rapporteur with the following response to the above inquiry:

> "Action is being taken against them under section 5 (j) of the 1950 Emergency Provisions Act for having created disturbances at the funeral with the aim of disrupting it and for having instigated the people to unrest. There should exist no anxiety or fear of torture or ill-treatment in detention as such practices are strictly prohibited in the Prison Manual and the Police Act, and the authorities concerned scrupulously follow the regulations laid down."

96. In mid-June 1995, three political party leaders, namely U Thu Wai and U Htwe Myint (respectively former Chairman and Vice-Chairman of the now defunct Democracy Party) and U Tun Shwe, were also arrested for having allegedly met with foreign residents. Responding to the Special Rapporteur's inquiry about their situation, the Government of Myanmar provided, in its note verbale dated 4 October 1995, the following response:

> "U Tun Shwe, U Thu Wai and U Htwe Myint were charged under section 5 (j) of the Emergency Provisions Act for collecting and distributing anti-government seditious pamphlets, and were sentenced to seven years' imprisonment on 3 July 1995 after due process of law. Action was taken against these individuals not because of their contacts with resident foreigners as alleged, but because they transgressed existing laws."

97. On 27 September 1995, Ye Htut, a 27-year-old student, was arrested in Yangon for having allegedly sent "incriminating documents" about Myanmar to dissident Burmese groups based outside the country.

98. On 18 November 1995, among the crowd which gathered that day to listen to Daw Aung San Suu Kyi's speech, the Special Rapporteur has been informed that three NLD members, namely, Toe Aung, Maung Aye and Myo Zoe, were arrested for having allegedly intervened with the police who were erecting barricades in front of her house. According to the information received, the three persons were charged with assaulting a police officer and were reportedly sentenced to two years' imprisonment.

99. Most recently, on 16 December 1995, U Sein Hla Aung, a 45-year-old NLD member was reportedly arrested near his home in Mandalay for having distributed videos of the weekend gatherings which have been taking place regularly outside Aung San Suu Kyi's home since her release in July 1995.

Due process of law

100. In its note verbale dated 4 October 1995, the Government of Myanmar provided the Special Rapporteur with the following general response to his enquiry with regard to due process of law during and after trials in Myanmar.

> "In the Union of Myanmar, a person cannot be arrested and detained if it is not in accordance with the law. It is provided in section 61 of the Code of Criminal Procedure that no police officer shall detain in custody a person for a period exceeding 24 hours. Where it is necessary to detain such an accused for more than 24 hours, special order of a magistrate has to be obtained under section 167 of the Code of Criminal Procedure. The arrested person has the right of defence and the right to have legal defence counsel. Moreover, the arrested or detained person has the right to apply freely for bail to the magistrate concerned and the court may grant him bail according to the merits of the case."

101. In spite of the Government's position with regard to certain cases, and based on information received from several independent reliable sources, the Special Rapporteur considers that the notion of "due process of law" as defined particularly in terms of articles 10 and 11 of the Universal Declaration of Human Rights is generally not respected in Myanmar. On the contrary, information and testimony received reveal a consistent, if not routine, failure to respect due process. Numerous testimonies alleged the absence of counsel during trial, the absence of time and support to prepare a defence and all other such attendant guarantees. In addition, there is no proportionality between offences committed and punishments applied, particularly in political cases where sentences of 7 to 20 years have been given for what could be described as peaceful political activity, such as the distribution of leaflets, criticism of the Government and appeal for democratic process in the National Convention deliberations.

102. The following are some examples. According to reliable sources, the Special Rapporteur was informed that in June 1995, subsequent to the arrests of U Tun Shwe, U Thu Wai and U Htwe Myint, their families did not know where they had been taken. Later they were reportedly sent from the Military Intelligence Interrogation Centre to Insein Prison. On 3 July 1995, all of them were taken to Bahan Township court and summarily sentenced to seven years' imprisonment. It was further reported that lawyers were not allowed to contact the defendants for consultation, nor were defence lawyers present at

the trial. Only after they had been sentenced were the three men told that they might appeal if they wished. But even for this purpose they have not been allowed to meet their lawyers. They could only sign statements to the effect that their lawyers might act for them.

103. With regard to the three NLD leaders arrested on 18 November 1995 in front of Daw Aung San Suu Kyi's house, the Special Rapporteur was informed that only 48 hours passed between their arrest and their sentencing. Although the Special Rapporteur has no details of the trial proceedings, it would appear that the accused could not possibly mount an effective defence with regard to the legal and factual basis for their arrest and incarceration in such a short time.

104. In the regions of the country with a predominantly non-Burman population, reports from various reliable sources continue to describe how an unknown number of civilians have been arrested as suspected insurgents (or sympathizers therewith) and how they remain detained in the countryside jails. It is reported that the few prisoners who gained access to defence counsel had to rely on "defenders" who were inadequately-trained government officials. In some areas, civilians were often summarily tried for minor offences, as well as for robbery, rape or murder, while military personnel who committed the same crimes were rarely punished.

105. The following are the detailed charges against 15 Members of Parliament mentioned in the summary of allegations received by the Special Rapporteur from the Government of Myanmar in its note verbale of 4 October 1995.

Name	Charge(s)
U Ohn Kyaing	"Sentenced to seven years' imprisonment on 17 October 1990 for sending a letter defying the authority of the Government; Sentenced to 10 years' imprisonment on 15 May 1991 for co-authorship of a seditious paper entitled 'Three ways to attain power'."
U Tin Htut (Einme-1)	"Sentenced to seven years' imprisonment on 15 May 1991 for co-authorship of a seditious paper entitled 'Three Ways to Attain Power'."
U Win Hlaing U Naing Naing U Mya Win U Hla Tun	"Sentenced to 10 years' imprisonment on 30 April 1991 for their involvement in organizing a meeting for setting up an illegal parallel Government."
U Tin Aung Aung U Zaw Myint Aung U Zaw Myint U Hla Than	"Sentenced to 25 years' imprisonment on 30 April 1991 for their involvement in organizing a meeting for setting up an illegal parallel Government."
Dr. Myint Aung	"No person by the name of Dr. Myint Aung has been detained."

U Tin Soe	"Sentenced to two years' imprisonment and was fined 300 kyats on 25 August 1993 for criminal trespass into U Khin Htay's premises at No. 107, Myanma Gon Ye Street, Mingala Taung Nyunt Township in October 1992. In the course of a squabble between them over the sale of an apartment, U Tin Soe used abusive language and took photographs without the latter's express consent. U Khin Maung Htay reported the incident to the Mingala Taung Nyunt Police Station, whereby U Tin Soe was charged by the police under sections 447, 294 and 506 with criminal trespass. The Court found him guilty of the charge. Released from detention on 9 March 1995 upon completion of his sentence."
U San Win	"Sentenced to 11 years' imprisonment on 23 August 1991 for misappropriation of teakwood which was to be supplied to the Thanlyin bridge project."
U Khin Maung Swe U Sein Hla Oo	"Sentenced to seven years' imprisonment on 6 October 1991 for their collaboration with Dr. Khin Zaw Win in writing and distributing false news that would jeopardize the security of the State."

Prison conditions and the treatment of prisoners

106. This year, unlike his two last visits, despite his repeated requests, the Special Rapporteur was not permitted to see any prisoner either in Insein Prison or in Myitkyina Jail. The Special Rapporteur was also denied access to the cells of both prisons. Similarly, the Government of Myanmar rejected the ICRC standard requirements for visits to places of detention (i.e., that it meet prisoners in private, have access to all prisons and be assured of repeated visits). The non-acceptance of the customary ICRC procedures for visits to places of detention and the non-acceptance of the Special Rapporteur's request to meet with some detainees while in Insein Prison and Myitkyina Jail would indicate that the Myanmar authorities are unwilling to open their jails to public scrutiny.

107. Given the lack of access to Myanmar prisons, the Special Rapporteur could only rely on reports from former detainees which indicate that conditions in the prisons fall far below minimum international standards established by the United Nations. Prisoners are said to be denied adequate food (in amount and quality) and health care, to be housed in insanitary and degrading conditions and subjected to cruel disciplinary practices or torture.

108. Numerous allegations, often in considerable detail, have been received from various sources alleging that members of the Myanmar military, intelligence and security services and police continue to torture persons in detention or otherwise subject them to cruel, inhuman or degrading treatment and punishment. Such treatment seems to be routinely employed during the

interrogation of persons who have been arbitrarily arrested. Many former political detainees testified to having been put into leg irons and beaten with canes, sometimes to the point of unconsciousness.

109. According to information received, Saw Naing Naing, Monywa Tin Shwe, U Win Tin, Myo Myint Nyein and Dr. Myint Aung, all members of the NLD, have been subjected to severe ill-treatment since mid-November 1995 at Insein Prison, where they are at present being held. During this period, the prisoners were said to have been interrogated in respect to letters addressed to the Special Rapporteur which had reportedly been smuggled out of the prison and which contained allegations of ill-treatment and poor conditions. U Win Tin is said to suffer from Spondylitis (an inflammation of the vertebrae). According to the information received, prison officials forced the five prisoners to sleep on concrete floors without mats or blankets in "military dog cells", which are small cells where military dogs are normally kept. The five have also been denied access to their families. On the basis of the information received, the Special Rapporteur, in a letter addressed on 15 January 1995 to the Government of Myanmar, expressed his fears and preoccupation over these allegations. He pointed out that the impartial and free assessment of the situation of human rights in Myanmar requires him to have access to any letters, documents or materials of any kind and no person should be subjected to punishment or maltreatment because of their collaboration with him. He added that such a practice would clearly be in contravention of Commission on Human Rights resolution 1995/75 which urges Governments to refrain from all acts of intimidation or reprisal to those who have provided testimony or information to representatives of United Nations human rights bodies.

110. The Special Rapporteur received testimony from reliable sources indicating that detainees are very often forced to sleep on cold cement, and that many of them suffer from sickness and serious diseases. The same reliable testimony indicates that cells are often overcrowded and that prisoners are provided with inadequate hygiene or medical care. A former woman inmate reported to the Special Rapporteur that during her stay in Insein Prison between 1989 and 1992, around 170 to a maximum of 250 women were held in a two floor dormitory measuring 60 by 40 feet. During that period, she said, at least 30 children and new-born infants were living with their mothers in the prison. The mortality rate among the new-born children in the prison was very high and this was due mainly to the inadequate food provided to them.

111. Bribery and corruption were said to be a major problem in Myanmar prisons. Although families can bring food and medicines to their relatives, such supplies are reportedly sometimes confiscated by the prison authorities. It was said that about one eighth of the items brought to prisoners are confiscated.

112. The Special Rapporteur was told by the Myanmar authorities that prisoners convicted of criminal offences could participate in voluntary labour at project sites and, by participating in such projects, could have their sentences reduced. Despite the Government's explanation, the Special Rapporteur remains concerned at current reports of hundreds of prisoners who have been forced to work under extremely harsh conditions on infrastructure projects without being released at the completion of their duties. Several

detainees from prisons throughout Myanmar have been reportedly forced, together with the people of Mong Nai, to build a railway section from Mong Nai to Nam Zarng, with the commitment that they be released after the completion of the section. Now, the same prisoners are reportedly being forced to continue working on different sections, from Mong Nai to Mawkmai and from Ho Nam Sai Khao to Shwe Nyong. One prisoner reported that three of his companions had died during the construction. Apparently, prisoners can avoid going to such camps if they pay large bribes to the prison authorities.

113. The Special Rapporteur was also informed by persons released from prison that during their detention they were not allowed to have any reading material, including the State-run newspaper, or material with which to write, or non-political literature; they were reportedly also denied access to radios.

C. Torture and other cruel, inhuman or degrading treatment

114. Allegations concerning the practice of torture and other cruel, inhuman or degrading treatment or punishment have previously been addressed by the Special Rapporteur in his reports to the Commission and the General Assembly (A/47/651, paras. 46-52; E/CN.4/1993/37, paras. 97-114; A/48/578, paras. 9-11; E/CN.4/1994/57, paras.48-50; A/49/594, paras. 13-15; E/CN.4/1995/65, paras. 114-117; A/50/568, paras. 20-23). On the basis of the information received throughout the past year it appears that the practice of torture remains widespread. Reports of torture and inhuman treatment in the past year include severe beatings, shackling, near suffocation, burning, stabbing, rubbing of salt and chemicals into open wounds and psychological torture, including threats of death. Other reported methods of torture include sexual assaults and rape, mostly among women serving as porters. In some cases, victims alleged that they had suffered burns and the cutting off of parts of their bodies (for example, ears and tongue).

115. According to reports received, torture and ill-treatment would seem to be a common method to extract confessions from civilians suspected of real or perceived anti-government activities. It also seems to be a means for the Myanmar authorities to punish citizens who do not comply with their orders. The most vulnerable populations are porters in the course of their duties, and civilians living in areas of active insurgency. It has also been reported that some victims of torture have to pay bribes to avoid such treatment.

116. In addition to receiving several reports alleging widespread torture and other cruel, inhuman and degrading treatment in Myanmar, the Special Rapporteur has interviewed persons claiming to be victims or to have witnessed such human rights violations. Several persons gave testimony, corroborated by their own scars and disabilities, about torture which they suffered during the time they were serving as porters for the Army.

117. With respect to some specific cases, the Special Rapporteur draws attention to his latest report to the General Assembly at its fiftieth session (A/50/568) and to the report of the Special Rapporteur on torture to the Commission on Human Rights at its present session (E/CN.4/1996/35, paras. 113-114; E/CN.4/1996/35/Add.1, paras. 458-475). In this connection, the

Special Rapporteur is aware that the Government of Myanmar has responded to some of the allegations transmitted by the Special Rapporteur on torture.

D. Freedom of expression and association

118. The freedoms of expression and association are guaranteed respectively by articles 19 and 20 of the Universal Declaration of Human Rights. These rights include the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, and the freedoms of peaceful assembly and association. The Special Rapporteur has previously reported on the interference of Myanmar law and SLORC orders with the freedoms of expression and association (E/CN.4/1993/37, para. 186). In Myanmar, it would appear that SLORC does not permit any freedom of expression or association that significantly conflicts with or opposes SLORC, the regional Law and Order Restorations Councils (LORC) at different levels, or the Government.

Freedom of expression

119. the Special Rapporteur was informed that there has been increased access for foreign journalists in Myanmar. Their movement and access to contacts were reportedly less restricted or monitored than in previous years. Foreign newspapers were also available in some bookstores in Yangon, and more than 80 Myanmar magazines, of social and cultural interest, are available to the public. To a large extent, these developments are a reflection of the increasing scale of international business and domestic commercialization resulting from open door policy of SLORC.

120. In 1995, during his visit to Myanmar, the Special Rapporteur noticed that, within the country, the written press, radio and television continue to be subject to governmental censorship and that the distribution of written material was also subject to governmental restrictions and control. All magazines must be read by a governmental body, the "Press Scrutiny Board", before their distribution.

121. The Myanmar media are largely used as an instrument to propagate and promulgate what SLORC has defined as the political, economic and social objectives of the Union of Myanmar. The Special Rapporteur received information from several reliable sources which demonstrates the extent of governmental supervision over and application of restrictions on freedom of expression. For example, it is reported that since the beginning of 1995, Myanmar's most popular public speaker, U Aung Thin, has been completely barred from giving public lectures in any part of the country. Whenever his name comes up before SLORC officials for approval to speak, permission for the rallies is immediately refused or withdrawn. Another example brought to his attention concerns the failed attempt of the popular literary journal, "Sa-pay Gya-neh," to dedicate its June 1995 issue to the Myanmar poet and NLD elected member, Min Thu Wun. The issue was reportedly blocked at the very last moment by an order from the Deputy Minister of Home and Religious Affairs, although the cover of the publication carrying Min Thu Wun's portrait had already been passed by the censors.

122. While a multiethnic society such as Myanmar might reasonably be expected to have its diversity reflected in the media, the Special Rapporteur notes that, to his knowledge, there are no newspapers in any minority language. It is also reported that writing and publishing books in minority languages is a very difficult task which requires a very long procedure. All books and printed material have to pass before a censorship board, but minority-language texts have to pass the additional obstacle of translation into Burmese before they can be reviewed.

123. Apart from censorship, the Government of Myanmar continues to intimidate its citizens and discourages them from exercising their fundamental right to freedom of expression by prosecuting persons through the use of criminal and treason-related charges. The Special Rapporteur mentioned in his previous report to the Commission on Human Rights (E/CN.4/1995/65) that one of the charges against Khin Zaw Win, Daw San Nwe and U Khin Maung Swe, who were arrested in July 1994, was that of "writing and distributing false news that could jeopardize the security of the State". The Special Rapporteur notes that other citizens are still being arrested for peaceful expression of their ideas. As mentioned above (see para. 96), three political party leaders were sentenced on 3 July 1995 to seven years' imprisonment "for collecting and distributing anti-government seditious pamphlets". More recently, a student, U Ye Htut, was sentenced on 14 November 1995 to seven years' imprisonment for "writing false and fabricated news about Myanmar since 1992, which could cause foreign countries to misunderstand the actual situation prevailing in the country".

124. It is evident that the total State domination of the media, together with the existence of a wide range of SLORC orders limiting the freedom of expression, seriously undermines the possibility of the citizens freely expressing their opinions.

Freedom of association

125. Turning to the issue of freedom of association, violations come in two principal forms: restrictions on association of a political nature, and on the right to form and join independent trade unions.

126. With respect to the right to form and join trade unions, and notwithstanding the fact that Myanmar is a party to International Labour Organization (ILO) Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organize, workers and employees in Myanmar do not enjoy the right to join organizations of their own choice outside the existing structure. Furthermore, such organizations do not have the right to join federations and confederations or to affiliate with international organizations without impediment.

127. The situation in Myanmar was examined by the ILO Committee on the Application of Standards at its eighty-second session, in June 1995. As regards the application by Myanmar of ILO Convention No. 87, the Committee took note of the statement of the Myanmar Government representative indicating his Government's commitment to harmonize law and practice with the Convention. The Committee, however, felt serious concern that the Government had not acted on the observations of the Committee of Experts over many years, and that no

trade unions in the true sense of the term existed. It recalled that it has been commenting upon the serious incompatibilities between the Government's law and practice, on the one hand, and the Convention, on the other hand, for 40 years. Seafarers in Myanmar were reportedly denied the right to form an independent trade union for the defence of their basic rights and interests and could not affiliate with an international federation. It was reported that, through the Seamen Employment Control Division, the Government of Myanmar has total control over the placement of the approximately 30,000 Myanmar seafarers, who are allegedly required to sign a contract that they will not contact the International Transport Workers' Federation.

128. With respect to restrictions on political parties, reports indicate that in Myanmar political parties are subject to intense and constant monitoring by SLORC. In this regard, the Special Rapporteur received several reports of acts aimed at restricting the activities of political parties, in addition to the existing SLORC orders, including Order 2/88 prohibiting the assembly of "five or more persons" which remains in effect.

129. Although the Special Rapporteur is aware that since the release of Daw Aung San Suu Kyi, a crowd of two to three thousand people is gathering every weekend outside the gate of her residence to hear what she and other NLD leaders say, the law prohibiting public gatherings without obtaining permission from local administrative bodies remains in force.

130. Leaders of some political parties are reportedly not allowed to leave their locality without prior permission from the authorities concerned. During the Special Rapporteur's meeting with leaders of political parties, U Aung Shwe, Chairman of NLD, informed him that on 23 October 1991 he was told verbally not to go outside the Yangon city municipal limits. This restrictive order still applies to him at the present time. It is reported that Central Executive Committee and Central Committee members who wish to travel outside Yangon are required to inform the authorities in advance. On arrival at their destination they have to report to the local authorities as well.

131. Distribution of party literature to the public is not allowed and political parties are generally forbidden to use any printing equipment for the reproduction and distribution of their bulletins, pamphlets and statements. The Special Rapporteur is aware of one notable exception, enjoyed by NUP, which is mentioned in paragraph 61 above.

132. Oppositional or critical political views are not given coverage in the media. For instance, it was reported that in August 1995 the Myanmar Government had been jamming Burmese language radio programming by the British Broadcasting Corporation. This was allegedly done after Daw Aung San Suu Kyi had given a series of interviews to foreign journalists that were broadcast into Myanmar that month.

133. Since the withdrawal of the NLD delegates from the National Convention on 29 November 1995, the Special Rapporteur has received several reports which indicate that new restrictions have been placed on NLD members and that Vice-Chairmen U tin Oo and U Kyi Maung are reportedly under constant surveillance and routinely harassed.

E. Freedom of movement and forced relocation

134. Freedom of movement is guaranteed by article 13 of the Universal Declaration of Human Rights. This right includes freedom of movement and residence within the borders of each State, and the right to leave any country, including one's own, and to return to one's country.

135. Information received by the Special Rapporteur indicates that freedom of movement is restricted in Myanmar. Exit from the country requires possession of specific government authorization, which is allegedly difficult to obtain. Application for exit visa and passport requires certificates of nationality and security clearances which many citizens either do not have or cannot obtain. Passport applications are reviewed by a board and decisions appear to be dependent on political considerations. Entry visas for Myanmar citizens who left the country legally or for those who acquired foreign citizenship are said to be more readily available.

136. With regard to restrictions on the freedom of movement inside the country, the Special Rapporteur notes that only citizens carrying identity cards are free to travel within the country, which precludes those residents unable to meet the restrictive provisions of the citizenship law, for example, the Muslim population living in Rakhine State. In addition, all citizens are required to inform the authorities of their movements within the country and the names of overnight guests must be reported to and registered with the local authorities.

137. During his visit to Myanmar, the Special Rapporteur was pleased to note that the Government had continued to ease restrictions on foreign travellers. Several members of intergovernmental and international non-governmental organizations are permitted to travel through the country to implement their programmes directly with the concerned population. Nevertheless, reliable sources informed the Special Rapporteur that certain persons, such as human rights advocates, journalists and political figures, continued to be denied entry visas.

138. Other well-documented reports received by the Special Rapporteur concern violations of the right to own property, as articulated in article 17 of the Universal Declaration of Human Rights. The reports refer to cases of confiscation or destruction of movable and immovable property, for which only in a very few cases were the victims said to have been given some form of compensation. People continue to be forcibly relocated, with little or no compensation, to new towns and villages. In some areas, such as Hlaing, Thngangyun and Tamwe, displaced home-owners do not get any compensation, although some were reportedly given the option of buying apartments in the buildings constructed on the site of their old homes. Usually the cost of these new apartments is beyond the means of the displaced owners. Most of those displaced have to buy plots of land in the new townships with their own money, causing them great financial hardship. The displaced population are usually faced with great economic difficulties, as their means of livelihood were connected to the area where they previously lived.

139. The Special Rapporteur received other disturbing reports of the seizure of arable lands by the authorities to establish new towns or for military

purposes. This results in some farmers being deprived of their traditional means of subsistence. For example, in September 1995, the military under the East Command (Taunggyi Headquarters) reportedly started to occupy agricultural land claimed by the local farmers in Alegyaung Village, Ywangan Township, Taunggyi Division, Shan State, which belongs to the Kinda Watershed area. As a result, 30 to 40 farmers have reportedly lost all of their land, and many others are left with plots too small to survive.

140. Several minority groups have in the past been affected by violations of property rights. Among the victims were individuals, families and even entire villages considered guilty by association and consequently subjected to a policy of extended punishment. Confiscation or demolition of property has also been systematically applied as a sanction against alleged insurgent sympathizers. At present, forcible relocations appear to be taking place mostly in the context of development projects.

F. Labour rights

141. On the question of forced labour, the Special Rapporteur received during his visit to Myanmar the texts of two recent secret directives of SLORC which prohibit the practice of labour without payment. The secret directives in question are SLORC Directives No. 82 and No. 125, the full and authentic texts of which were received by the Special Rapporteur in the original Burmese language; an unofficial English translation is reproduced in annex II to the present report. Directive No. 82, which was promulgated on 27 April 1995, instructs "to stop obtaining labour without compensation from the local people in irrigation projects". Directive No. 125 "prohibits unpaid labour contributions in national developments projects". The Special Rapporteur welcomes the Government's intention to cease the practice of labour without payment but notes that the contents of neither directive constitutes abrogation of any of the laws under the 1908 Village Act and the Towns Act, which authorize forced labour under certain conditions and which are still in force in the country. In addition, the Special Rapporteur notes that several months after their publication, these directives are still not public and therefore not accessible to those to whom they would apply and to those protecting the rights of persons accused of breaking the laws.

142. Given the many complaints received by the Special Rapporteur from several reliable sources, it seems that neither of the directives is being implemented rigorously. Men, women and children are allegedly still used as forced labour for the construction of railways, roads and bridges. They are reportedly not paid for their work and are allowed only a minimum of food and rest. Various sources have reported an especially extensive use of forced labour in relation to several completed or ongoing railway construction projects. Eyewitnesses travelling through Myanmar by land from Moulmein to Ye in the Tenassarim Division have reported that resumption of forced labour on the Ye-Tavoy railway is occurring. According to the source, more than 50,000 people are being forced to work on a new section of the railway from Ye to Kanbauk. Other reports indicate that forced labour is also being used to repair and widen the highway in Pegu township. Each household is being allegedly ordered to pay 50 kyats per member every 2 weeks as their contribution to the construction of this highway. The duties that people are said to perform range from sorting out stones that come from a quarry, carrying the stones

from one point to another, shifting gravel through bamboo leaves and mixing and laying down the tar. The living conditions on the construction site are said to be very poor, heat and dust being the major factor of hardship.

143. In June 1995, at the eighty-first session of the International Labour Conference in Geneva, the Special Rapporteur took note of the fact that the matter of forced labour in Myanmar had been raised before the Committee on the Application of Standards. The Committee could not find a way to agree with the position of the Government, as reported to the Committee of Experts, that what was being alleged to be forced labour was actually voluntary labour. Further, the Committee called upon the Government of Myanmar to repeal urgently the offensive legal provisions of the Village Act and the Towns Act to bring them into line with the letter and spirit of the ILO Convention No. 29 concerning Forced or Compulsory Labour, of 1930, ratified by the Government of Myanmar in 1955.

144. Apart from forced labour, the Special Rapporteur has been informed that workers in Myanmar do not enjoy basic labour rights including, in particular, freedom of association and the right to organize. There is hardly any trade union movement, and workers and trade unionists who criticized the Government would risk interrogation and arrest.

G. The National Convention and the process of democratization

145. When the National Convention adjourned on 8 April 1995, its Chairman, Chief Justice U Aung Toe, stated that agreement had been reached to lay down principles for the designation of self-administered divisions and self-administered zones under the chapter of the Constitution entitled "State structure".

146. On 28 November 1995 the Government of Myanmar reconvened the National Convention. The subjects on its agenda were: the legislature; the executive and the judiciary branch. Like the previous sessions, the plenary opening session was attended, among others by 5 delegates from the National League for Democracy included in the political parties delegates group and 81 representatives elected from the NLD included in the representatives elected group. Following the opening address delivered by Lt.Gen. Myo Nyunt, Chairman of the National Convention Convening Commission, the NLD representatives decided to withdraw from the Convention and to boycott its current session.

147. Article 21.1 and 21.3 of the Universal Declaration of Human Rights provides that everyone has the right to take part in the government of his country, directly or through freely chosen representatives, and that the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections.

148. The Special Rapporteur notes that of the 702 National Convention delegates from 8 categories, 49 are selected by the 10 political parties remaining after the 1990 elections, 106 are elected representatives and the remainder of the delegates from the other 6 categories were chosen by SLORC. In fact, NLD members, despite winning 80 per cent of the seats in the 1990 general elections comprise only about 15 per cent of the 702 delegates.

149. Furthermore, the Special Rapporteur has been informed that each of the eight groups represented were to have a panel of five chairmen who would lead the discussions and that, in the political parties group, only one chairman was from the NLD - the party that won a majority in the 1990 elections. In the elected representatives group, where 89 of the remaining 106 delegates were from the NLD, no NLD representatives were selected as chairmen.

150. Given these figures and the process of selection of the delegates, the Special Rapporteur notes that the National Convention is not truly representative in the sense of article 21.1 and 21.3 of the Universal Declaration of Human Rights, because its membership does not reflect the results of the elections.

151. Freedom of expression in general and political debate in particular in the National Convention compound seem to be severely restricted and circumscribed. Delegates cannot distribute discussion papers among themselves: all papers have to be submitted first to the chairmen of the groups. The chairmen scrutinize the contents and, if the statements are found to be contradictory with the agreed principles, the relevant parts are deleted. Only then can the papers be read at the group meetings. When the proposed statements are to be read before the plenary meeting, they have to be submitted again for scrutiny by the Work Committee. Moreover, it appears that delegates are not totally free to meet with other delegates and to exchange their views inside the compound. They are reportedly not entitled to distribute leaflets, to wear badges or to bring any written or printed materials to the Convention without prior approval by the National Committee.

152. During the Special Rapporteur's visit to Myanmar in 1995, he was also informed that all the delegates to the National Convention are required to stay in the Convention compound. Five delegates live together in each dormitory. There is one sergeant clerk in each dormitory serving the delegates. It is reported that these sergeant clerks may also observe the activities of the delegates. It was also reported to the Special Rapporteur that when the delegates return to their states to see their families they are sometimes harassed and monitored by the local authorities. In this regard, the Special Rapporteur fears that this atmosphere of intimidation does not permit the delegates to be in touch with the populations they represent to enable them to take into account their grievances, wishes and points of view and, thus, to represent them meaningfully during the debates which are taking place in the National Convention.

H. The movement towards reconciliation with the insurgents

153. During the Special Rapporteur's meetings in Myanmar, the Government proclaimed the recent cease-fire agreements as its most significant achievement, as an example of national reconciliation and as the starting-point for national and regional development. In response to the Government's invitation to the armed groups "to return to the legal fold", it has been reported that on 21 March 1995, the Kayinni National Progressive Party (KNPP) reached a cease-fire agreement with the Government of Myanmar. Three months later, on 29 June 1995, the Government signed another cease-fire agreement with the Mon minority group. The New Mon State Party (NMSP) was the fifteenth rebel ethnic group to agree to a cease-fire with the Government.

154. With regard to the cease-fire agreement concluded between KNPP and the Government of Myanmar, the Special Rapporteur is concerned that it has not been faithfully respected by SLORC. According to several reports received, the Myanmar Army, on 15 June 1995, breached certain terms of the agreement. It deployed its troops into the KNPP designated areas and continued to collect porter fees and to conscript Kayenni and other civilians for army operations, such as carrying military equipment, ammunition and other supplies.

155. During the Special Rapporteur's stay in Myitkyina (Kachin State), the Government invited U Zaw Hra, Vice-Chairman of the Kachin Independent Organization (KIO) and U Khun Nawng, the liaison officer of the Myitkina office, to meet with him. The meeting took place in the presence of the governmental delegation which was accompanying the Special Rapporteur and which recorded the entire conversation. Given the fact that no interpreter was assigned to the Special Rapporteur during his mission, he had to rely on a governmental interpreter during the meeting.

156. U Zaw Hra informed the Special Rapporteur that KIO had signed a cease-fire agreement with the Government of Myanmar on 24 February 1994 after four years of negotiations. Although the terms of the agreement were not publicized, U Zaw Hra told the Special Rapporteur that the principal point agreed upon was the maintenance of the present military status quo in both SLORC and KIO designated areas.

157. During the meeting, U Zaw Hra explained to the Special Rapporteur that the central Government of Myanmar has denied the Kachin population its basic social, human and economic rights. He said that the profits extracted from the natural resources available in Kachin State, such as teak and jade, were not benefiting the Kachin population but the central Government. When compared with other States, Kachin State was the poorest and was lagging behind in development owing to the civil war, but also to the policy of the central Government, which never reinvested in that region, always favoured the Burmese and considered the Kachin as second-class citizens. With regard to the human rights situation, the Vice-Chairman told the Special Rapporteur that between 1988 and 1992 the Kachin population had suffered deportation, forced relocation and destruction of their villages. Many villagers had been forced to work as porters or as labourers building roads.

158. U Zaw Hra admitted that since the signature of the cease-fire agreement, the human rights situation had improved considerably in Kachin State. Cases of forced relocation, forced labour and forced portering had decreased noticeably, except in some remote areas.

159. U Zaw Hra expressed the hope that the signature of the cease-fire agreement would enhance opportunities for implementing regional development programmes and making the entire Kachin State prosperous. He also hoped that efforts and arrangements would be made in order to permit wider participation of the local population in governing and benefiting from the resources of their own region. U Zaw Hra concluded the meeting by saying that it was only through political settlement that genuine peace could be reached in Myanmar.

160. The Special Rapporteur was informed about the absence of genuine representatives of the ethnic nationalities in the National Convention.

Despite the fact that the Government of Myanmar had made various cease-fires with ethnic nationalities, these groups are only allowed seats as observers and therefore cannot participate in the process of drafting the Constitution.

I. The treatment of the Muslim population in Rakhine State

161. In 1992, there was a mass influx of some 250,000 Muslim refugees into Bangladesh from Rakhine State in Myanmar. In order to address this problem, memoranda of understanding concerning the voluntary repatriation of the refugees, were signed between UNHCR and the Governments of Bangladesh and Myanmar, on 12 May 1993 and 5 November 1993 respectively. Repatriation to Myanmar is continuing and more than 190,000 Myanmar refugees out of an estimated total of about 250,000 have so far been repatriated from neighbouring Bangladesh.

162. UNHCR is playing a key role in helping ensure conditions in Rakhine State that are conducive to the return of the refugees and in monitoring their treatment by the Myanmar authorities. According to reliable sources, since the beginning of UNHCR assistance to the repatriation process, very few cases of human rights violations have been reported to them.

163. Most of the Muslim population of Rakhine State are not entitled to citizenship under the existing naturalization regulations and most of them are not even registered as so-called foreign residents, as is the case with foreigners/stateless persons living in other parts of Myanmar. In this regard, the Special Rapporteur would like to point out that since Myanmar is a party to the Convention on the Rights of the Child, Myanmar is obligated, in accordance with article 7 of the Convention, to afford nationality to every child born on its territory, in particular where the child would otherwise be stateless.

164. The Special Rapporteur has been informed that the Government of Myanmar has agreed to grant returnees over 18 years of age identity documents called "Temporary identification cards", but these identity documents would not change the status of the persons concerned. The present status situation of the Muslim population in Rakhine State does not permit them to leave their villages without authorization from the local SLORC commander. They are also not allowed to serve in State positions and are barred from attending higher educational institutions.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

165. The visit of the Special Rapporteur to the Union of Myanmar at the invitation of the Government was facilitated by the efforts, cooperation and courtesy extended to him by the officials of the Government, in particular General Khin Nyunt, Secretary One of SLORC, and U Ohn Gyaw, Minister for Foreign Affairs. All of the requests of the Special Rapporteur to meet with government representatives were met, including with the Chief Justice, the Attorney-General, the Minister of Information, the Minister for National Planning and Economic Development, and the Minister for Home Affairs.

166. The Special Rapporteur wishes to express his appreciation to the Government for arranging his visits to Kachin State and Shan State, Insein Prison, Myitkyina Jail and other places and facilities which he had requested to visit.

167. However, the Special Rapporteur was disappointed that this year, despite a formal written request before going to Myanmar and despite his repeated requests while in Myanmar, he was not permitted to see any prisoner, either in Insein Prison or in Myitkyina Jail. He also regrets that the meetings with the representatives of political parties were held at a place and in an atmosphere not conducive to a free and unencumbered exchange of views.

168. The Special Rapporteur generally observed in Yangon, Myitkyina and Kyaingtone that there were visible signs of relaxation of tension in the life of the people. There were many consumer goods in market places where many shoppers crowded. Physical developments in the construction or improvement of roads, bridges, buildings and railways are taking place in different parts of the country and in some border areas. However, just as last year, he was informed that only a small portion of the population was enjoying an improved lifestyle and the majority who were poor were suffering from the high prices of basic necessities such as rice and medicine.

169. The Special Rapporteur welcomes the expanding cooperation between the Government of Myanmar and various other United Nations organs and international humanitarian non-governmental organizations.

170. The Special Rapporteur is pleased to note that the Government of Myanmar has continued to release persons who have been detained for political activities, including Daw Aung San Suu Kyi. However, he expresses his concern that there are still hundreds of such persons detained in Myanmar.

171. The Special Rapporteur notes problems in the field of the administration of justice with regard to fair trials, free access to defence lawyers, prescription of disproportionate penalties and time for careful examination of the cases by courts.

172. The non-acceptance by Myanmar of the customary procedures of ICRC for visits to places of detention is a negative step for the amelioration of conditions of detention in Myanmar. Conditions in Myanmar prisons seem to fall short of international standards; i.e., the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Special Rapporteur believes that suspicion of mistreatment of prisoners will continue as long as access to public scrutiny is denied.

173. Detailed reports, photographs, video recordings and a variety of physical evidence seen by the Special Rapporteur indicate that the practices of forced labour, forced portering, torture and arbitrary killings are still widespread in Myanmar. They seem to be occurring in the context of development programmes and of counter-insurgency operations in ethnic minority regions. Many of the victims of such acts belong to ethnic national populations. In

particular, they are peasants, women, daily wage-earners and other peaceful civilians who do not have enough money to avoid mistreatment by bribing.

174. The Special Rapporteur continues to be concerned about the serious restrictions imposed upon the enjoyment of civil and political rights. The people do not enjoy the freedoms of opinion, expression, publication and peaceful assembly and association. They seem to be always fearful that whatever they or their family members say or do, particularly in the area of politics, would risk arrest and interrogation by the police or military intelligence. This is a result of the existence of a complex array of security laws which provide the Government with sweeping powers of arbitrary arrest and detention. These laws include the 1950 Emergency Provisions Act, the 1975 State Protection Law, the 1962 Printers and Publishers Registration Law, the 1923 Official Secrets Act and the 1908 Unlawful Association Act. In this connection, more than 15 individuals, who were exercising their rights to freedom of expression and association, were arrested in the course of 1995 on a combination of charges under these laws, including such charges as writing and distributing "illegal leaflets, spreading false information injurious to the State and contact with illegal organizations".

175. The persons whose civil and political rights are most severely restricted are the members of political parties, particularly the NLD leaders, and delegates to the National Convention, again those from the NLD. Because of both visible and invisible pressures, they cannot assemble in a group, cannot have free discussion, and cannot publish or distribute printed materials. In this situation, it is difficult to assume that open and free exchanges of views and opinions are taking place in Myanmar in order to produce a truly multi-party democratic society.

176. Turning to the freedoms of movement and residence in Myanmar, including the right to leave and re-enter one's own country, the Special Rapporteur concludes that clear violations of these freedoms are to be found in Myanmar law and practice. Specifically, severe restrictions are placed on travel abroad. On the matter of internal deportations and forced relocations, the Special Rapporteur concludes that government policies violate the freedoms of movement and residence and, in some cases, constitute discriminatory practices based on ethnic or religious affiliations.

177. Government representatives have repeatedly explained to the Special Rapporteur that the Government is willing to transfer power to a civilian government, but that, in order to do so, there must be a strong Constitution and that, in order to have a strong Constitution, they are doing their best to complete the work of the National Convention. However, the Special Rapporteur cannot help but continue to feel that, given the composition of the delegates (only one out of seven delegates was elected in the 1990 elections), the restrictions imposed upon the delegates (practically no freedom to assemble, print and distribute leaflets or to make statements freely), and the general guidelines to be strictly followed (including the principle regarding the leading role of the Tatmadaw), the National Convention does not appear to constitute the necessary "steps towards the restoration of democracy, fully respecting the will of the people as expressed in the democratic elections held in 1990" (General Assembly resolution 47/144, para. 4).

178. The Special Rapporteur is paying special attention to the recent successes of the government initiative to invite the armed insurgent groups to enter into talks with the Government and he notes, in particular, an initially positive response this year from the Karen National Progressive Party and the New Mon Socialist Party. He considers that cease-fire agreements are a helpful basis for lasting peace but that they do not represent lasting peace. Serious dialogue with ethnic representatives for permanent reconciliation is essential. He is hopeful that the process will move forward from a military cease-fire agreement to a political agreement, which is the only solution to obtain true reconciliation and peace throughout the country.

179. The Special Rapporteur welcomes the fact that, subsequent to the signing on 5 November 1993 of the Memorandum of Understanding between the Union of Myanmar and the Office of the United Nations High Commissioner for Refugees (UNHCR) to facilitate and guarantee the voluntary and safe return of Myanmar residents from Bangladesh, and the subsequent opening of a UNHCR field office in Rakhine State to allow UNHCR international staff to monitor the repatriation of the refugees, tens of thousands of refugees have been successfully repatriated.

B. Recommendations

180. The Special Rapporteur regrets that he finds it necessary to repeat most of the recommendations made in his report to the Commission on Human rights in 1995. In the light of the foregoing conclusions, the Special Rapporteur also finds it necessary to make additional recommendations for the consideration of the Government of Myanmar.

(a) The Government of Myanmar should fulfil the obligations it has assumed under Articles 55 and 56 of the Charter of the United Nations "to take joint and separate action in cooperation with the Organization for the achievement of ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". In this respect, the Special Rapporteur wishes to state that the Government of Myanmar is in an ideal position because it could encourage the delegates of the National Convention to include various human rights provisions in the new Constitution using, as a reference, the provisions of the Universal Declaration of Human Rights, a copy of which should be circulated to each delegate in the Burmese language.

(b) The Government of Myanmar should consider accession to the International Covenants on Human Rights; the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment; and the two Protocols additional to the Geneva Conventions of 1949.

(c) Myanmar law should be brought into line with accepted international standards regarding the protection of the right to physical integrity, including the right to life, and prohibition of torture, cruel, inhuman or degrading treatment. In this regard, the Government of Myanmar should take immediate and unequivocal steps to stop the practices of torture and other cruel, inhuman or degrading treatment.

(d) All political leaders, including elected political representatives, students, workers, peasants and others arrested or detained under martial law after the 1988 and 1990 demonstrations or as a result of the National Convention, should be tried by a properly constituted and independent civilian court in an open and internationally accessible judicial process in which all defendants could have access to counsel of their choice. If found guilty in such judicial proceedings, they should be given a just sentence. Alternatively, they should be immediately released and the Government should undertake to refrain from all acts of intimidation, threat or reprisal against them or their families and to take appropriate measures to compensate all those who suffered arbitrary arrest or detention.

(e) The Government of Myanmar should repeal or amend, as appropriate, the relevant provisions which at present prevent the International Committee of the Red Cross from carrying out its humanitarian activities with regard to prison visits. In that respect, the Government of Myanmar is encouraged to invite ICRC to return to Myanmar in order to carry out its purely humanitarian tasks.

(f) The Government of Myanmar should take steps to facilitate and guarantee enjoyment of the freedoms of opinion, expression and association, in particular by decriminalizing the expression of oppositional views and by relinquishing government control over the media and literary and artistic communities. The Government of Myanmar should, therefore, consider repealing or amending all existing laws restricting freedom of expression, including the Printers and Publishers Registration Law of 1962, in order to guarantee to all people in Myanmar, including members of ethnic minorities, full protection of their right to freedom of opinion and expression, as established in article 19 of the Universal Declaration of Human Rights.

(g) The Government of Myanmar should also comply with the obligations under International Labour Organization Convention No. 87, permitting the formation of independently organized trade unions. The Government of Myanmar should also take all necessary measures to guarantee and ensure that all political parties may freely exercise their activities without restrictions. To this end, all restrictions on freedom of movement, association and assembly, including the 1908 Unlawful Association Act, should be removed.

(h) The Government of Myanmar should remove all restrictions relating to the entry and exit of citizens into and out of the country, as well as their movement within the country.

(i) The Government of Myanmar should cease all discriminatory policies which interfere with the free and equal enjoyment of property, and compensate appropriately those whose property has been arbitrarily or unjustly destroyed.

(j) The Government of Myanmar should comply with obligations under the International Labour Organization Convention No. 29, prohibiting the practice of forced portering and forced labour. In this connection, the Government of Myanmar should urgently take the appropriate measures to repeal the offensive legal provisions under the Village Act and the Towns Act to prevent the continuation of the practice of forced labour. The Government

of Myanmar should also publicize and rigorously implement the "Secret Directives" which discourage the practice of forced labour without payment.

(k) The Government of Myanmar should take all necessary measures to accelerate the process of transition to democracy and to include in that process the representatives duly elected in 1990 who are excluded from participating in the meetings of the National Convention. In this regard, the Government of Myanmar should without delay begin a process of genuine and substantive dialogue with the leaders of the National League for Democracy and with other political leaders, including representatives from ethnic groups.

(l) The Government of Myanmar is encouraged to continue its cooperation with UNHCR in facilitating and ensuring the voluntary and safe return of Rakhine Muslims from Bangladesh.

(m) The Government of Myanmar should consider the revision of the 1982 Citizenship Law to abolish its burdensome requirements for citizenship. The law should not apply its categories of second-class citizenship, which have discriminatory effects on racial or ethnic minorities, particularly the Rakhine Muslim population. It should be brought into line with the principles embodied in the Convention on the Reduction of Statelessness of 30 August 1961.

(n) The Government of Myanmar should take the necessary steps to bring the acts of soldiers, both private soldiers and officers, into line with accepted international human rights and humanitarian standards so that they will not commit arbitrary killings, rape, or confiscations of property, or force persons into labour, portering, relocation or otherwise treat persons without respect to their dignity as human beings. When the hiring of the labour of local villagers for portering and other works is required for governmental purposes, it should be obtained on a voluntary basis and adequate wages should be paid. The nature of the work should be reasonable and in accordance with established international labour standards. When relocation of villages is considered necessary for military operations or for development projects, proper consultation with the villagers should take place and appropriate compensation should be paid for those relocations which may be determined necessary for reasons of the public good.

(o) Military and law enforcement personnel, including prison guards, should be thoroughly informed and trained as to their responsibilities in full accordance with the standards set out in international human rights instruments and humanitarian law. Such standards should be incorporated in Myanmar law and legislation, including the new constitution to be drafted.

(p) Given the magnitude of the abuses, official condemnation should be made by the Government of all acts by authorities involving human rights violations. Such acts, including all acts of intimidation, threat or reprisal, should not benefit from the present system of almost complete denial by, and impunity under, the Government.

(q) The Government of Myanmar is also encouraged to continue its cooperation with various United Nations organs and international

humanitarian non-governmental organizations in facilitating and ensuring the free access of their international staff to ordinary persons in the townships and villages - to establish contacts and provide assistance to persons who suffer from a shortage or lack of food, safe water, medicine, medical care and proper education.

(r) In the light of all of the above, the Special Rapporteur recommends that the Commission on Human Rights request the High Commissioner for Human Rights to consider placing a team of human rights field officers in such locations as would facilitate improved information flow and assessment and would help in the independent verification of reports on the situation of human rights in Myanmar. The implementation of this mechanism, for which the Commission on Human Rights should request the necessary additional resources, would help the Special Rapporteur to assess better the continuing situation of human rights in Myanmar and contribute constructive criticisms and comments.

Annex I

EXTRACT FROM THE PRISONS ACT, 1894
(SECTION 40, 784)

"Time for interview

1. The Superintendent shall fix the days and hours at which all interviews shall be allowed, and no interviews shall be allowed at any other time, except with the special permission of the Superintendent. A notice of the hours during which prisoners may be interviewed shall be posted outside the jail.

Place of interview

2. Every interview shall take place in a special part of the jail appointed for the purpose, if possible at, or near, the main gate. Provided that interviews with female prisoners shall, if practicable, take place in the female enclosure. Provided also that, if a prisoner is seriously ill, the Superintendent may permit the interview to take place in the hospital, and a condemned prisoner shall ordinarily be interviewed in his cell. Provided further that the Superintendent may, for special reasons, to be recorded in writing, permit an interview to take place in any part of the jail.

Interview to take place in the presence of a jail officer

3. Every interview with a convicted prisoner shall take place in the presence of a jail officer, who shall be responsible that no irregularity occurs and who shall be so placed as to be able to see and hear what passes and to prevent any article being passed between the parties. No politics should be allowed to be brought out at the interview.

Termination of interview

4. Any interview may be terminated at any moment if the officer present considers that sufficient cause exists. In every such case the reason for terminating the interview shall be reported at once for the orders of the senior officer present in the jail.

Duration of interview

5. The time allowed for an interview shall not ordinarily exceed 20 minutes but may be extended by the Superintendent at his discretion.

Search before, and after, interview

6. Every convicted prisoner, and every unconvicted criminal prisoner, shall be carefully searched before and after an interview."

Annex II

DIRECTIVE NO. 125 PROHIBITING UNPAID LABOUR CONTRIBUTIONS IN NATIONAL DEVELOPMENT PROJECTS

Unofficial Translation

Secret

Union of Myanmar

The State Law and Order Restoration Council

Office of the Chairman

No. 125/Na Wa Ta (00)/Nyaka - 2

Dated: 2 June 1995

To,

State/Division Law and Order Restoration Councils

Subject: Prohibiting Unpaid Labour Contributions in National Development Projects

1. It has been learnt that in obtaining labour from the local populace in carrying out national development projects, such as construction of roads, bridges and railways as well as building of dams and embankments, the practice is that they have to contribute labour without compensation.

2. In fact, these projects have been carried out with a view to furthering the welfare of the local people. As such, it is imperative that in obtaining the necessary labour from the local people, they must be paid their due share.

3. Causing misery and sufferings to the people in rural areas due to the so-called forced and unpaid labour is very much uncalled for. The sufferings of the people may in turn create misperception, misunderstanding and misjudgment of the Government and the Tatmadaw (Armed Forces).

4. Therefore, it is hereby instructed that the authorities concerned at different levels make proper supervisions so as to avoid undesirable incidents.

Sd/-
Lt.Col. Phay Nyein
(for the Secretary)

Copy to: Ministry of Agriculture
Ministry of Railways
Ministry of Construction

Annex III

DIRECTIVE NO. 82 TO STOP OBTAINING LABOUR WITHOUT COMPENSATION FROM THE LOCAL PEOPLE IN IRRIGATION PROJECTS

Urgent

Unofficial Translation

Secret

Union of Myanmar

The State Law and Order Restoration Council

Office of the Chairman

No. 82/NaWaTa (Oo)/ Ta Wa

Dated: 27 April 1995

To:

Minister
Ministry of Agriculture

Chairman
Yangon Division Law and Order
Restoration Council

Commander
No. (11) Light Infantry Division Headquarters

Subject: To stop obtaining labour without compensation from the local people in irrigation projects

1. It has been learnt that some of the local people are very concerned over the assignment of each and every family in the task of digging a certain number of pits for making ditches and trenches in the overall construction of dams in Yangon Division.

2. It is hereby instructed to hire paid labourers to carry out these projects and to stop the practice of obtaining labour from the local people without monetary compensation.

3. In so doing, the Ministry of Agriculture is to bear the resulting expenditure.

Sd/-
Lt.Col. Phay Nyein
(for the Secretary)